

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

CHRISTOPHER VERNON DOWNEY,	:	NO. 1:07-CV-00253
	:	
Plaintiff,	:	
	:	
v.	:	OPINION AND ORDER
	:	
UNIVERSITY OF CINCINNATI,	:	
et al.,	:	
	:	
Defendants.	:	

This matter is before the Court on the Magistrate Judge's November 5, 2007 Report and Recommendation (doc. 12), Plaintiff's Response in Opposition (doc. 14), Defendants' Response to Plaintiff's Objections (doc. 15), and Plaintiff's Supplemental Response (doc. 16). For the reasons indicated herein, the Court ADOPTS and AFFIRMS the Magistrate Judge's Report and Recommendation, and DISMISSES this matter from the Court's docket.

I. Background

Plaintiff filed his Complaint pro se on March 28, 2007, alleging that Defendants the University of Cincinnati, the University of Cincinnati Medical Center, Dr. James Currell, and Dr. Quinton Moss violated The Restatement of Bill of Rights for Mental Health Patients, 42 U.S.C. § 10841, and therefore denied him constitutional and civil rights (doc. 1). Plaintiff alleges that he was confined to the University of Cincinnati Medical Center against his will, misdiagnosed with bipolar disorder, and forced to take medication (Id.). He further alleges that Dr. Currell and

other University of Cincinnati employees restricted his free speech, that he was subjected to abusive treatment in the year 2000, as well as to difficulties in his divorce proceedings (Id.). Defendants filed a motion to dismiss, arguing that Section 10841 does not create any enforceable rights, and that the University of Cincinnati and the University of Cincinnati Medical Center are entitled to absolute immunity under the Eleventh Amendment (doc. 9).

II. The Magistrate Judge's Report and Recommendation

The Magistrate Judge found Defendants' argument well-taken that Section 10841 creates no constitutional right (doc. 12, citing Monahan v. Dorchester Counseling Ctr., Inc., 961 F.2d 987, 994-95 (1st Cir. 1992)), and therefore Plaintiff cannot state a claim based on the violation of such provision (doc. 12). The Magistrate Judge further found that Plaintiff failed to allege a First Amendment claim because 1) he failed to allege any conduct by the named defendants that resulted in a limitation of his rights, and 2) his statement that Dr. Currell sought to restrict his right to free speech by painting him as a psychotic is wholly conclusory and unsupported by the facts (Id.). The Magistrate Judge noted that any claim premised on alleged violations that took place in the year 2000 are barred by the statute of limitations, and that Plaintiff fails to state a claim against the University of Cincinnati or the medical center as both are state institutions

cloaked with Eleventh Amendment immunity (Id. citing Alabama v. Pugh, 438 U.S. 781, 782 (1978)(per curiam)). For all of these reasons, the Magistrate Judge recommended that the Court grant Defendants' motion to dismiss (Id.).

III. The Parties' Responses to the Report and Recommendation

Plaintiff's Response (doc. 14) fails to address the legal grounds upon which the Magistrate Judge premised his Report and Recommendation. Defendants further note that in his Response, Plaintiff raised allegations that were not in the Complaint, and that Plaintiff provided no basis for the Court to reject the Report and Recommendation (doc. 15). Although technically filed out of time, Plaintiff submitted a Supplemental Response (doc. 16). In such Response Plaintiff argues that the state improperly challenged the jurisdiction of this Court (Id.).

IV. Discussion

Having reviewed this matter, the Court finds the Magistrate Judge's Report and Recommendation thoughtful, well-reasoned, thorough, and correct. Plaintiff has in no way addressed the Report and Recommendation, but rather has presented arguments that meander into facts not alleged in the Complaint, and legal issues not presented in the Report and Recommendation. The Magistrate Judge did not base his recommended decision on a preference for state court adjudication of this matter. Rather, the Magistrate Judge found no legal basis for a claim under Section

10841, and no factual basis for Plaintiff's allegations against the individual Defendants. The Magistrate Judge further found claims barred by the statute of limitations, and found Eleventh Amendment immunity applicable to the state-operated entities. The Court finds no error in the Magistrate Judge's findings.

The Court notes that Plaintiff would be better served if represented by counsel in attempting to assert such constitutional rights that he may have, as opposed to proceeding pro se. However, on the basis of the this record, the Court affirms the Magistrate Judge.

Accordingly, the Court ADOPTS and AFFIRMS the Magistrate Judge's Report and Recommendation (doc. 12), and GRANTS Defendants' Motion to Dismiss (doc. 9). The Court DIRECTS the clerk to close this case on the Court's docket.

SO ORDERED.

Date: April 10, 2008

/s/ S. Arthur Spiegel

S. Arthur Spiegel

United States District Senior Judge